

OCT 02 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOHN F. GORCORAN, CLERK
BY: *J. Thompson*
DEPUTY CLERK

JOHNATHAN LEE X SMITH¹, et al.,
Plaintiff,

Civil Action No. 7:09-cv-00266

v.

MEMORANDUM OPINION

GENE M. JOHNSON, et al.,
Defendants.

By: Samuel G. Wilson
United States District Judge

Johnathan Lee X Smith, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. However, Johnathan Lee X Smith has had three previous civil actions dismissed as frivolous.² Therefore, Johnathan Lee X Smith may not proceed with this action unless he either pays the \$350.00 filing fee or shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

As Johnathan Lee X Smith has neither prepaid the filing fee nor demonstrated that he is “under imminent danger of serious physical injury,”³ the court dismisses him as a plaintiff to this complaint without prejudice.⁴

¹ Johnathan Lee X Smith submits his case under the name “Johnathan Lee X”; however, according to online VDOC records, the name associated with the inmate number that plaintiff provides the court is Jonathan Lee Smith. Smith has filed many cases in this court and in the Eastern District of Virginia, and in many of those cases, the court recognized him as Johnathan Lee X Smith; therefore, the court will refer to Johnathan Lee X Smith by the same name in this action to remain consistent.

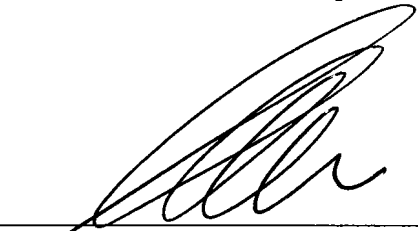
² See Smith v. Ailstock, et al., Civil Action No. 7:95cv00939 (W.D. Va. Aug. 28, 1995); Smith v. Commonwealth of Virginia, et al., Civil Action No. 7:97cv00723 (W.D. Va. Dec. 17, 1997); Smith v. Ailstock, et al., Civil Action No. 3:96cv00339 (E.D. Va. Apr. 23, 1996); Smith v. Mueller, et al., Case No. 96-7602 (4th Cir. Jan. 29, 1997) (recognizing Johnathan Lee X Smith as a three-striker under the PLRA).

³ In this action, plaintiffs allege that the defendants have violated their right to free exercise of religion, subjected them to disparate treatment because of their religion, imposed a substantial burden on their exercise of religion, and punished and harassed them because of their religion. The court finds that Johnathan Lee X Smith has failed to demonstrate that he is under imminent danger of serious physical harm.

⁴ The court has previously notified Johnathan Lee X Smith that he may not file civil actions in this court unless he either pays the filing fee or demonstrates that he is under imminent danger of serious physical injury. Therefore, the court will not give Johnathan Lee X Smith additional time to pay the filing fee or amend his complaint.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to all plaintiffs.

ENTER: This 2nd day of October, 2009.


United States District Judge